



AppsHosting, Inc.
1800 E. Garry Ave. Suite 109
Santa Ana, CA 92705
(888)641-APPS

Terms of Service

All AppsHosting Customers must accept all the terms of this agreement in order to use AppsHosting services. Notwithstanding, by using our services the customer acknowledges that they have read this license agreement and agree to be bound by the terms and conditions contained herein, as well as all acceptable use policies that are referenced. AppsHosting reserves the right to change or modify any of the terms and conditions contained within this agreement. The Customer agrees to periodically review the up-to-date terms of service to ensure understanding of and compliance with current policies.

Terms of Payment

Payments can be made electronically or mailed to AppsHosting at the following address:

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A. **Non-Recurring Fees.** The first invoice for hosting or management services will be generated shortly after the Services Commencement Date, when the installation is completed and the system is available for use. This invoice is due upon receipt and shall include, but is not limited to the following: (i) any non-recurring charges for installation and/or setup; (ii) the first monthly recurring Service Fee; and (iii) fees for any additional options (if any). Fees for any other non-recurring services such as consultation, training or development services will be due in 30 days from the date of invoice.

B. **Recurring Fees.** The fees for hosting or management services that occur on regular intervals for specified duration is the "Recurring Fee". Beginning on the Services Commencement Date, Customer agrees to pay the Recurring Fee in advance on the first day of each billing cycle (the "Due Date"), without invoice. The billing cycle for Recurring Fees will be specified in the first invoice.

C. **Late Payments.** If the Customer is unable to make payment within the specified time frame, they should immediately contact AppsHosting to make alternate payment arrangements. AppsHosting



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reserves the right to suspend or terminate service if payment has not been received within 14 days from the Due Date. In the event of any default under the terms of this agreement, Customer agrees to pay all costs of collection, including but not limited to: (1) collection fees; (2) court costs; (3) private process fees, and; (4) attorney's fees.

D. Returned or Rejected Payment. If Customer's payment is returned or rejected for any reason whatsoever, Customer agrees to pay a \$30 fee to AppsHosting, in addition to any fees that may be charged to Customer, by an interested third party.

Cancellation

Cancellation of service is allowed only after the initial contract term has been met. Unless otherwise noted, all hosting contracts are month-to-month, meaning there is no specific minimum contract period. After the initial contract period, Customer may cancel the hosting service by giving at two (2) weeks' prior written notice to AppsHosting. To cancel the service, please send an email to support@appshosting.com or fax to (949)329-0998. If you do a charge back you will be charged an administration fee of \$100. Setup fees are nonrefundable, and AppsHosting does not issue prorated refunds for fees paid. After cancellation of service, you will have one (1) week to take a backup of your own data. One (1) week after cancellation, your data and application will be permanently deleted from our system.

User Supplied Content

AppsHosting services may be used for lawful purposes only. Via AppsHosting's services, Customer may have access to chat areas, forums, web pages, e-mail, and or other services that enable the customer to send or post materials viewable by others. The Customer must not submit publish or display on the network any defamatory, inaccurate, abusive, obscene, infringing, or threatening content. In addition, the Customer must not submit, publish, and or display any content that violates any US Federal, State, or local law. The Customer is solely responsible for such content made accessible through the network. In addition, the Customer may not use AppsHosting services to assist any other person or entity in violating any Federal, State, or local laws.



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Copyright Infringement

It is AppsHosting's policy to respond to notices of alleged infringement that comply with the Digital Millennium Copyright Act (<http://www.copyright.gov/legislation/dmca.pdf>) and other applicable intellectual property laws, which may include removing or disabling access to material claimed to be the subject of infringing activity. If we remove or disable access to comply with the Digital Millennium Copyright Act, we will make a good-faith attempt to contact the owner or administrator of each affected site so that they may make a counter notification pursuant to sections 512(g)(2) and (3) of that Act.

Security

AppsHosting consistently strives to safeguard customer and related data by using industry best practices for application and system security. However, there is no guarantee that the information on the Internet is secure. In addition, information on the Internet may never be destroyed. The Customer agrees to indemnify and hold AppsHosting harmless in case of information loss or loss of privacy. AppsHosting is not responsible for any damages arising from Customer's use of or by Customer's inability to use the server, web hosting packages, or any other services for any reason. AppsHosting is not liable for and does not guarantee the protection or privacy of electronic mail or information transferred through the Internet or any other public network.

The Customer may not use AppsHosting's Network in an attempt to circumvent user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for the customer, logging into a server or account the customer is not expressly authorized to access, password cracking, probing the security of other networks in search of weakness, or violation of any other organization's security policy. In addition, the Customer may not attempt to interfere or deny service to any user, host, or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network. AppsHosting will cooperate fully with investigations of violations of systems or network security, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. Users who violate system or network security may incur criminal or civil liability.



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Customer Data

Any and all customer data that is stored on AppsHosting servers, including but not limited to databases and file systems, is the responsibility of the customer. By default, all production environments are backed up but all non-production environments are not backed up unless a separate agreement has been made in writing.

For the environments that are backed up, AppsHosting takes regular backups in case a restore is needed. On Saturday, a full backup is taken. Every day except Saturday, incremental backups are taken. Unless otherwise specified, only the most recent backups are retained. In the event of data loss, AppsHosting will make every effort to restore the data. In no event shall AppsHosting have any liability whatsoever for damage, unauthorized access, alteration, loss, theft or destruction of information provided to AppsHosting, distributed or made available for distribution via the services.

Service Level Agreement

AppsHosting is committed to providing the highly available and optimally performing application system environment for customers. AppsHosting will continuously monitor the network to ensure it's available to users except during the times of planned maintenance. AppsHosting guarantees proper functioning of all hardware components and will replace any failed component at no charge to the Customer.

AppsHosting measures uptime and other availability indicators constantly and will be made available to customers on a regular basis. The internal process performance are also measured and reported by the AppsHosting to the customer. This service includes incident reporting and root cause analysis. For specifics on the penalty for the down time, please refer to the hosting proposal or contract if applicable.

There may be times when an unforeseen disruption of service may occur due to a number of reasons. AppsHosting maintains procedures to recover from such outage scenarios, and will make an effort to bring up services with minimal disruption.

Service Delivery and Support

Support to customers is provided by the following methods:



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E-mail: support@appshosting.com (or dedicated e-mail address specified in the contract)

Web: Customer support portal, <https://helpdesk.appshosting.com>

Phone: 888-641-APPS, x2 (or dedicated phone number specified in the contract)

When service request is made, a level 1 technician tries to answer all questions, which might include help with simple problems or general "how-to" questions. If the question is more complex, the user is passed on to the level 2 technician. Level 2 questions may, for example, deal with advanced features and possible product bugs or failures. If the level 2 technician cannot help the caller, a level 3 technician may be consulted either by the customer or by the level 2 technician. Some research and investigation at this level might be required, which can take time.

Work Out of Scope

Basic support, such as keeping the systems and databases up are covered under the standard hosting agreement. Any middleware and or application issues are beyond scope of the standard support and will be considered billable work.

Any offsite work done at the request of client not covered by existing support agreement is billed at standard ad-hoc AppsHosting rate of \$85 per hour. AppsHosting personnel will make the best effort to provide a quote before performing the out-of-scope work, but in cases where the quote was not provided due to the circumstances, the customer will still be responsible to pay for the out-of-scope work performed.

Illegal Use

AppsHosting servers may be used for lawful purposes only. Transmission, storage, or distribution of any information, data, or material in violation of any applicable law or regulation, or that may directly facilitate the violation of any particular law or regulation is prohibited. This includes, but is not limited to: copyrighted material; trademarks; trade secrets or other intellectual property rights used without proper authorization; material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws. Examples of unacceptable content or links include: pirated software, hacker programs or archives, Warez sites, MP3, and IRC bots.



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Adult Content

Due to the special system and network requirements of adult-oriented sites, pornography and hard core sex-related sites are prohibited. This includes sites that may infer sexual content or provide links to adult content elsewhere. This is also true for sites that promote any illegal activity or content that may be damaging to our servers or any other server on the Internet, or provide links to such sites.

Security Violations

Violations of system or network security are prohibited and may result in criminal and civil liability. Examples include but are not limited to the following: unauthorized access, use, probing, or scanning of systems security or authentication measures, data, or traffic; interference with service to any user, host, or network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system, broadcast attacks; forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.

Server Resources*

Any service that uses a high amount of server resources (such as, but not limited to, CPU time, memory usage, database connections and network resources) will be given the option to either pay additional fees (which will depend on the resources required), reduce the resources used to an acceptable level, or upgrade its service to a Dedicated Server plan. AppsHosting shall be the sole decision maker of what is considered to be a high server usage level. Accounts exceeding limits as set per hosting plan will result in the environment being shut down.

UCE (Unsolicited Commerce Email) - SPAM

Spamming, the sending of unsolicited mass email from or through any AppsHosting server or using an email address that is maintained on any AppsHosting machine is STRICTLY prohibited. AppsHosting will be the sole decision maker as to what constitutes a violation of this provision. Customers are also in violation of this provision if they engage in spamming using the service of another ISP or IPP, but reference in the spam a web site hosted on a AppsHosting server, or if they sell or distribute software on their web site that facilitates spamming. Violators will face immediate suspension.



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Server Abuse

Any attempts to undermine or cause harm to an AppsHosting network, server or customer are strictly prohibited. Any such attempts will be reported to the appropriate authorities, and will be punishable to the fullest extent of the law.

Software Distribution*

AppsHosting shared web hosting accounts are not configured for the purposes of distributing software and/or multimedia products. If you wish to distribute software and/or multimedia files, please contact Sales to make special arrangements.

Multimedia Files*

Multimedia files are defined as any graphics, audio, and video files. AppsHosting shared web hosting accounts are not to be used for the purposes of distributing and storing unusual amounts of multimedia files. Any web site whose disk space usage for storing multimedia files exceeds 60% of its total usage, in terms of total size or number of files, will be considered to be using an unusual amount of multimedia files.

Other

Any content which generates complaints directed by others to us directly is prohibited. Any content containing a persons or organizations sensitive personal data, including but not limited to credit card numbers, social security numbers, and driver's license numbers is prohibited. Any content related to terrorist groups is prohibited.

Termination

In the event that AppsHosting becomes aware or reasonably believes, in its sole discretion, that AppsHosting servers are being used for illegal purposes, AppsHosting shall be entitled to immediately terminate the Agreement and the services without notice in addition to any remedies to which it may be entitled under law.

Privacy of Data

Please refer to our privacy policy, which is posted at the following website:

<http://www.appshosting.com/privacy>



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High Availability and Disaster Recovery

A high availability environment is defined as an environment that is comprised of redundant hardware and software so the application continues to operate even in the event of hardware failure. Disaster recovery site is defined as a secondary service center which can assume the function of the primary service center in case of major catastrophe that causes outage in the primary data center.

For those customers that may be interested, high availability environment or disaster recovery sites are available through AppsHosting, at an additional cost.

The basic hosted environments (Such as shared and dedicated) do not include any high availability features – They are optional features available at addition cost.

Limited Liability

APPSHOSTING SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE PRODUCT, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST PROFITS, LOSS OF USE, LOST DATA, PHONE BILLS, COMMUNICATION LINES BILLS, LOSS OF PRIVACY, DAMAGES TO THIRD PARTY EVEN IF APPSHOSTING HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER ANY CLAIMS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE OR OTHERWISE. FURTHER, APPSHOSTING WILL NOT CENSOR ANY CONTENT ON THE INTERNET. IT WILL BE CLIENT'S RESPONSIBILITY FOR THE USAGE OF HIS ACCOUNT AND ANY CONSEQUENCES OF THIS USAGE.

Indemnification

Customer shall indemnify, defend by counsel reasonably accepted by AppsHosting, protect and hold AppsHosting harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, or



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judgments directly or indirectly arising out of or related to the web hosting and other services provided by AppsHosting to the Customer.

Interpretation

The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflict of laws principles. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be awarded its attorneys' fees and costs incurred.

Arbitration

By signing this Agreement, Customer agrees that in the event of any dispute between the parties arising out of or relating to this Agreement or the services performed, such dispute shall be resolved by final, binding arbitration in Orange County, California, before a retired judge or justice. If the parties are unable to agree on a retired judge or justice, each party will name one retired judge or justice and the two named persons will select a retired judge or justice who will act as the sole arbitrator.

Entire Agreement

This Agreement contains the entire Agreement of the parties. No other prior or contemporaneous Agreement, statement, or promise, which is not contained herein, shall be valid or binding upon the parties. This Agreement may not be altered, amended or otherwise modified, except as set forth in writing and signed by AppsHosting and Customer.

Note: The asterisked items (*) are not applicable to Dedicated Hosting customers.

Signed:

Client:

Name: _____ Title: _____

Signature: _____ Date: _____